

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 17, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 182, HB 412, HB 625

EXECUTIVE ACTION ON HB 182

Motion: SEN. WILSON moved that HB 182 BE AMENDED. The amendments included HB018201.ADN **EXHIBIT**(sts60a01), HB018202.ADN **EXHIBIT**(sts60a02), HB018203.ADN and **EXHIBIT**(sts60a03).

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 10:23}

David Niss, Legislative Staffer, explained Amendment 201, saying the difference between the three offered amendments would be in

paragraph three. The issue addressed the question of a beneficiary not being paid immediately, about who would retain the money (or the retirement benefit), what would happen while the money was being retained, and the disposition of the money if a beneficiary did not make claim to the benefit within five years. Subsection (3) stated that retirement benefits not claimed within five years after the member's death are forfeited and revert to the retirement system trust fund. The 202 version left the language off the amendment to that section. The 203 version changed the subsection, saying, "the retirement benefits not claimed within five years after the member's death must be transferred to the Department of Revenue and must be held by the Department, subject to the provisions of the Uniform Unclaimed Property Act."

SEN. HARGROVE asked **Mr. Niss** if all three amendments were agreeable with other laws in the Constitution. **Mr. Niss** said there was an issue because retirement system benefits, unlike money held pursuant to the Uniform Unclaimed Property Act, is held pursuant to a Constitutional provision. One concerning investments would be Article 8, Section 13; another was Article 8, Section 15. Section 13, Subsection 3 addressed retirement benefits specifically, requiring the creation of the Unified Investment Program. He said it was important for the purposes of these amendments and how and by whom the benefit was maintained. The Board of Investments is run subject to this Constitutional provision for a large sum of money in addition to retirement benefits. Article 8, Section 13 referring to retirement benefits states, "Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private, corporate capital stock."

SEN. HARGROVE further questioned the definition of "public retirement assets", and if they would cease to be retirement benefits five years after death and become inactive. **Mr. Niss** was unaware of any definition, nor any limitation in current retirement law in Title 19 that after a certain number of years something else would happen to the money. He said that this entire issue had arisen because a provision in the Uniform Unclaimed Property Act in Title 70, different from retirement law, that said certain unpaid retirement benefits are presumed to have been abandoned. There was a provision in the Constitution that indicated that the money would forever be part of a retirement benefit and governed by Title 19, pursuant to the Constitution, and also the provision of the Unclaimed Property Act that said it was presumed abandoned. Section 15, Section 2

of Article 8 of the Constitution concerning public retirement system assets reads, "Public retirement systems shall be funded on an actuarial sound basis. Assets including income and actuarially required contributions shall not be encumbered, diverted, reduced or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses. The governing boards of Public Retirement Systems shall administer the system including actuarial determinations as fiduciaries of the system participants and their beneficiaries." The two sections of Article 8 say the benefit is to be held and invested, including private corporate capital stock and is to be managed by the Public Board Retirement boards which oversee the particular trust fund vs. the statutory language in Title 70 in the Uniform Unclaimed Property Act. This had led the Department of Revenue to say that the Uniform Unclaimed Property Act presumed that the money was abandoned and that they had the obligation to manage it pursuant to that title, not the Constitutional provisions in Title 19.

SEN. HARGROVE asked if Amendment 202 allowed the Retirement System to keep the money but negotiate with the Department of Revenue to dispose of it as unclaimed property. **Mr. Niss** answered in the affirmative.

Mike O'Connor, Executive Director of the Public Employees Retirement System, said they had been directed by the committee to negotiate their differences, and had agreed to Amendment 201 with the exception of Subsection 3. They wanted to broaden the section to say instead of, "for the purpose of identifying and locating beneficiaries," inserting, "for the purpose of administering the retirement systems." It would have also carried over to Page 2, Section 6, Subsection 2.

SEN. HARGROVE asked if it was done to make it more consistent with the Constitution. **Mr. O'Connor** said it would broaden it so it would not focus entirely on locating beneficiaries, but other agreements could be entered into. Also, it would tie into the Constitution, he said.

SEN. COLE asked if Page 2 was the same, he answered that Page 2 was the teachers' section, so the same wording would have to be changed as well.

SEN. HARGROVE commented on the differences that centered on whether the money stayed in the Retirement System or went out to be disposed of. **Mr. O'Connor** stated that in Amendment 202, the Retirement System assets would have to stay with the trust fund because of the Constitution. They have a memo of understanding

with the Department of Revenue and **David Senn, Executive Director, Teachers' Retirement System**. PERS would keep the money in a trust fund, then on an annual basis they would provide them with the names of the people they were looking for.

SEN. WELLS asked if the wording change in Section 3 would mean the funds would stay in the trust fund and the Dept. of Revenue would agree with PERS passing on the names of people to them.

Mr. O'Connor said they had agreed to it.

SEN. WELLS asked which of the amendments **Mary Bryson, Director, Department of Revenue** preferred. **Ms. Bryson** stated the Department would prefer 202 that left out where the money goes. She said it was a policy decision on whether or not the legislature would accept Subsection 3. This section basically said that after five years the money would be considered unclaimed property so it would revert. An individual beneficiary would be unable to lay claim to it. The memo of understanding would clarify that PERS would keep the money and provide the Dept. of Revenue with the information. Asked further if the memorandum was tied into statute, **Ms. Bryson** said a policy decision had to be made by the legislature as to whether retirement benefits that have not been claimed become abandoned property or become the assets of PERS and are no longer subject to being claimed. The Dept. of Revenue would also accept versions 201 and 203, she said, but preferred 202.

SEN. HARGROVE asked her if the five years was consistent with other items in the Unclaimed Property Act. **Ms. Bryson** told the committee that the act specified three years after the date of distribution or issuance, the property was determined to be unclaimed property and turned over to the state. The five-year proposal came from statutes that exist with the teachers' retirement, she thought. The Dept. of Revenue retains the assets in perpetuity under unclaimed property laws and was always able to be claimed. Under the new provision in Amendment 1, however, it would be unable to be claimed after five years.

SEN. TESTER asked if under current law any time limitations were made on benefits. **Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB)** stated that the teachers' system contained the language for the five-year version. Discussion follows with **Mr. Jenkins** about a period of time for claims to be made and a practical amount of time for retaining records.

SEN. HARGROVE asked **Mr. Jenkins** if the part of the paragraph about the disposal of the money was important. **Mr. Jenkins** replied that it was important for Constitutional purposes and

further stated that under federal laws, an employer may not take those funds out to do whatever they wish. The purposes were limited and were to be spent for benefits or the administration of the system. When the state takes the money over, they are taking money that belongs to the beneficiary that was put in by the beneficiary, state or local governments.

SEN. HARGROVE further asked if the Unclaimed Property Division was doing a search during the five years? **Mr. O'Connor** said the provision wasn't for the active person, but someone perhaps in a rest home who dies on the second of the month and has money for those two days owed. The beneficiary probably will not want to do the paperwork for the small amount of money and may never put claim to the money.

SEN. HARGROVE then asked when an unclaimed retirement benefit was subject to the provisions of the Uniform Unclaimed Property Act? **Mr. O'Connor** answered, "three years."

Mr. Niss, stated that after listening to testimony and reading through Section 13 and 15 of Article 8, at least one of the differences in how it would be handled by PERS vs. how it would be handled by the Department of Revenue, would be that PERS would hold it forever. Also, the money could be invested in corporate stock. The difference would be between whatever the trust fund, (referred to in the Uniform Unclaimed Property Act) is earning vs. corporate stock.

SEN. HARGROVE suggested that under those circumstances, the Department of Revenue would never be involved. **Mr. Jenkins** said the difference is 20 percent vs. 5-8 percent.

SEN. HARGROVE then asked **Mr. Jenkins** if there was any effort made on behalf of PERS to find people? **Mr. Jenkins** answered in the affirmative, saying they spent quite a bit of time trying to find people and that new provisions in the qualification bill that just passed that would improve that process and decrease the number of people that had outstanding accounts because they would be able to pay out small amounts without a claim being made by the individual. The payout would be automatically done. This had been one of the problems before, because people did not bother with the claims and they had records dating back 45 years.

SEN. HARGROVE asked about the first paragraph in all three versions. He asked if that was put in there to say that everyone could agree to a memo of understanding with the DOR so they could help out? **Mr. Jenkins** said, "yes." In a further comment he said where it said, "federal or state agencies," in order to make it all encompassing, so they weren't excluding anyone in broader

language about administering retirement systems, they would prefer it to read, "federal, state or political subdivision agencies."

SEN. WELLS asked **Mr. O'Connor** if he'd stated that after 1 to 15 years, a beneficiary had made claim? Hearing an affirmative answer, he further inquired whether sub-paragraph 3 the benefits not paid in five years are forfeited and revert to the trust fund. That would have indicated to him that six years later a person could not lay claim. **Mr. O'Connor** said that was true.

SEN. WELLS said Amendment 1 says they forfeit after five years, which I want to clarify. Is there a difference between the other systems and the teachers? **Mr. O'Connor** stated, it is five years after the death, so a person could be gone for 15 to 25 years.

SEN. WELLS asked if this was the case where they were gone for 15 years, then died, and someone came and laid claim? **David Senn** answered the question saying that the example was not a debt, but an individual who had left because of a mental disability, and had come back himself several years later. The scenario could have been a death and it would have been five years after the death of the member.

SEN. WELLS stated, that sounds like a definite difference between that and DOR. The Department of Revenue says that unclaimed property is held in perpetuity and there is no forfeiture. Therefore if we went with number Amendment 1 versus Amendment 3, where the money went over to the Department, the money would not be forfeited, but invested differently.

Ms. Bryson said, that is why we like Amendment 2. **SEN. WELLS** said, Amendment 2 allows them to keep it and invest it, and lets you locate the people.

SEN. COLE asked, wouldn't that be in Amendment 3, rather than Amendment 2? **SEN. WELLS** said, Amendment 2 does not where they go, but their memo of understanding would say it.

Ms. Bryson explained, the difference between Amendment 2 and Amendment 3 is Amendment 3 requires them to transfer the money to the Department, where Amendment 2 allows them to retain the money in the Retirement System and we can enter into that agreement.

SEN. COLE said, Amendment 2 allows the money to stays with PERS subject to the agreement. **SEN. COLE** asked **Mr. O'Connor** what his feelings were on the three Amendments. **Mr. O'Connor** said, we cannot live with Amendment 3. We are trying to be consistent with the other retirement systems, in that, five years after the

death of the member the money will revert. The difference between Amendment 1 and Amendment 2 is that it takes out the five years, which is already in the Teachers' Retirement System.

SEN. TESTER asked if # 1 also dictated that the funds would also revert to the system's trust fund regardless of an agreement?

Mr. O'Connor answers that it is silent where the money will be. He says that it addresses the specific situation where five years after death it reverts to the trust fund, but in all other situations, it didn't.

{Tape : 1; Side : B; Approx. Time Counter : 11:03}

SEN. COLE inquired about money in the fund five years after the member's death and if it would be forfeited to the PERS? What would happen if the beneficiary came in seven years later?

Mr. O'Connor answered that the money would be gone.

SEN. WELLS asked **Mr. O'Connor** what would happen in the same situation now? He answers that the funds continue to be in the trust fund.

SEN. WELLS asked if he wanted the change to limit it to five years for purposes of administration or record-keeping, **Mr. O'Connor** said it would ease the administration of the retirement plan. They kept records for individuals, he said, sometimes 30 years for a career and retirement records, perhaps for 40-50 years, making their record as long as 80 years. A five-year termination would be best, he said.

SEN. HARGROVE asks counsel if MCA provides closure if someone lives to 100? **Mr. O'Connor**, said they have several dozen people on retirement today over 100 years old and they would likely be perturbed to be declared dead.

SEN. TESTER asked if there had been a time when someone died and after five years the beneficiary came for benefits? **Mr. O'Connor** said only very rarely. They check death records on a monthly basis, so the beneficiaries had been notified within two months. The small dollar amounts were the problem.

Mr. O'Connor stated that the memo of understanding would help them work together. The people would be located then and benefits paid, instead of 30 to 40 years later.

SEN. HARGROVE said the negative aspects to version # 1 was even though infrequent, funds would be forfeited. Also, as long as the files were active, the retirement system would have to administer the fund. On amendment # 3 the money isn't invested

constitutionally. The drawback on item # 2 would be trusting the bureaucracy. If the change were made, "for the purpose of administering the retirement system," they could include things like the maintenance of files in their agreements or even closure. He felt comfortable that the executive branch would make better decisions with # 2.

SEN. TESTER brought forth the question on whether the two parties would have a falling out later and dissolve the understanding. The money should be left in the retirement account. In #1, it clearly states that it reverts back to the retirement system trust fund.

SEN. WELLS said, I feel similar to **SEN. TESTER**. I don't feel poorly about the benefits that are unclaimed five years after the death reverting back to the fund. As we heard, it doesn't happen very often and it doesn't appear that there would be a large some of money involved. The amount of money handled probably does not justify the cost of administration and record keeping. The Teachers' Retirement System already does this. If we went with #2, I don't think they could take care of those benefits in with a memo of understanding. Having a memo of understanding with the other agencies is not going to give them the authority to do anything different from what they do now. The only thing that gives them authority is a change of statute that we administer. I don't think it would be possible to forfeit funds after five years with a memo of understanding, but they would be able to negotiate how they looked for lost beneficiaries or retirees. I like #1 better because it ties it down and it doesn't leave room for someone to change their mind or people reading the law differently.

Motion: **SEN. WELLS** moves to add wording as stated: "the board may enter into agreements with federal, state or political subdivision agencies for the purposes of administering the retirement system," which would be included in whatever version is passed out of committee.

Vote: Motion passed unanimously 5-0.

Motion: **SEN. WELLS** moved that **AMENDMENT HB018201.adn BE ADOPTED.**

Discussion: **SEN. HARGROVE** offered opposition saying flexibility for the people in the executive branch was important to make choices they must make. He said he was uncomfortable with forfeiture, but felt they could make better day-to-day decisions.

SEN. COLE also expressed opposition to the motion.

Vote: A roll call vote was taken. Motion **carried 3-2 with SEN. COLE and SEN. HARGROVE voting no.**

Motion/Vote: SEN. WELLS moved that **HB 182 BE CONCURRED IN AS AMENDED. Motion passed unanimously 5-0.**

EXECUTIVE ACTION ON HB 412

Davis Niss explained the amendments in conjunction with **SEN. HARGROVE, EXHIBIT(sts60a04) HB041201.adn**. **Mr. Niss** had questions about the word, "findings" in the first paragraph. They had agreed to change the language. Change # 2 addresses maps for use by the state to include maps for public use. Changes in paragraph #3 and #4 arose during the hearing on the bill and are the most important because they had received testimony on them. At least one witness said the geological survey is not the body that the request for changes in federal maps is addressed to, rather the board on geographic names, he said.

Motion/Vote: SEN. HARGROVE moved that **AMENDMENT HB041201.adn BE ADOPTED. Motion passed unanimously 5-0.**

Motion: SEN. WILSON moved that **HB 412 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. WELLS could not support this. There were many inappropriate and derogatory names throughout the state, but that they contained important history for the time. He considered "squaw" only to mean an Indian woman, and never thought it was used in a derogatory fashion, until someone else pointed out that it was unacceptable. He suggested that it would then be questionable to use other terms such as "broad," or "crazy."

SEN. HARGROVE commented on language changes in other bills. He said **REP. CAROL JUNEAU** had done a good job of this bill and that it would not cost anyone any money. The changes would be made over time. The word, "squaw," obviously made the 30 people who came and testified on the bill unhappy, he said.

SEN. TESTER also commented on the usage of words, saying, "squaw," was not used in a complimentary fashion around the state. If changing the words made the people feel better, more accepted or less condemned, he favored it.

SEN. WILSON supported the bill, but said he anticipated an increase in vandalism.

{Tape : 2; Side : A; Approx. Time Counter : 11:40}

Motion/Vote: SEN. HARGROVE moved that HB 412 BE CONCURRED IN AS AMENDED. Motion carried 4-1 with SEN. WELLS voting no.

EXECUTIVE ACTION ON HB 578

Mr. Niss explained the amendments, EXHIBIT(sts60a05) HB057802.ash.

Issues had arisen during the hearing concerning the Montana Historical Society and the various pictures and videos used to promote tourism. The concern with the first exception, he said, was if the public got the original, the handling could be destructive. The Department of Commerce wanted the second exception because of concerns about their own liability, and the liability of the private parties given the pictures in regard to loss of the right of privacy to tourists appearing in the video. He wanted to point out the two separate reasons for provision (i) and (ii). In second amendment EXHIBIT(sts60a06) HB057801.adn, REP. SHEILL ANDERSON had specifically requested provision not be read to foreclose charges such as the Secretary of State makes for commercial access to their UCC data base.

The first amendment questions whether the bill should apply to the Montana Historical Society collections and tourism and slides. The second one concerns overly charging the fee for the purposes of computer access.

Motion: SEN. TESTER moved that Amendments HB057801.adn and HB057802.ash BE ADOPTED.

Discussion:

SEN. COLE said he had a couple of letters asking that the (ii) section of Amendment HB057802.ash be removed, primarily from private photographers because of pictures used with their permission. There was discussion on Travel Montana and material used solely to promote tourism.

SEN. HARGROVE expressed concern about the risk and extra work to the Department of Commerce. He said he didn't understand why REP. ANDERSON brought the bill for Bruce Barrett, yet he was opposing it, while REP. ANDERSON was opposing the amendment.

SEN. WELLS asked the chairman about an e-mail message from Mr. Barrett saying that Matthew Cohn, Administrator of Travel Montana, Montana Department of Commerce wanted to withdraw their proposed amendment. Travel Montana could warn people if they

thought they were giving people something that could get them in trouble, he said. He objected amending the bill to take them totally out of the picture. He thought it gave them too much power.

SEN. HARGROVE suggested that they defer their decision until they had a chance to confer with the sponsor.

Motion: **SEN. TESTER WITHDREW HIS MOTION ON HB 578.**

EXECUTIVE ACTION ON HB 625

Motion/Vote: **SEN. HARGROVE** moved that **HB062501.adn BE ADOPTED, EXHIBIT (sts60a07) .**

Discussion:

SEN. HARGROVE expressed concern about giving the bureaucracy more control than they should have over the people in the state. The sunset provision was a good idea, however.

SEN. COLE also had reservations, saying it might create more havoc. The family impact was subjective, he felt.

SEN. WILSON said he liked the concept and opined that it would not hurt to try it.

SEN. WELLS agreed, saying it was overdue. The amendment improved the bill in his opinion.

SEN. TESTER was voting for the bill, but expressed reservations because it was too subjective and would open the bureaucracy to playing politics on important issues.

Motion/Vote: Motion **carried unanimously.**

Motion/Vote: **SEN. WELLS** moved that **HB 625 BE CONCURRED IN AS AMENDED. Motion carried unanimously 5-0.**

ADJOURNMENT

Adjournment: 12:05 P.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts60aad)